

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

BRANDON XAVIER COLES, #1469259,

Petitioner,

v.

Civil Action No. 2:21cv329

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Before the Court are a Petition for a Writ of *Habeas Corpus* filed pursuant to 28 U.S.C. § 2254, ECF No. 1, and the Respondent's Motion to Dismiss. ECF No. 12. In his Petition, the *pro se* Petitioner alleges violation of federal rights pertaining to his convictions in the Circuit Court for the City of Hampton for murder and use of a firearm in the commission of a felony. As a result of the convictions, Petitioner was sentenced to serve 30 years in prison.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed June 23, 2022, recommends dismissal of the Petition with prejudice. ECF No. 16. On July 14, 2022, Petitioner timely filed objections to the Report and Recommendation. Respondent has not responded to Petitioner's objections and the time to do so has expired.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, finds that the Petition should be denied as untimely for the reasons stated in the Report

and Recommendation. Accordingly, the Court does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Report and Recommendation filed June 23, 2022. It is **ORDERED** that the Respondent's Motion to Dismiss, ECF No. 12, be **GRANTED**, and that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of the Respondent.

Finding that the procedural basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within thirty (30) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this Order to Petitioner and to counsel of record for the Respondent.

IT IS SO ORDERED.

/s/
Arenda L. Wright Allen
United States District Judge

Norfolk, Virginia
September 15, 2022